

October 28, 2020

BY ECF

The Honorable Margo K. Brodie
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

*Re: Federal Defenders of New York, Inc. v. Federal Bureau of Prisons, et al., No. 19
Civ. 660 (MKB)*

Dear Judge Brodie:

We write on behalf of the Federal Defenders to provide an update pursuant to the Court's Order dated October 16, 2020.

In-person visiting. Two weeks ago we advised the Court of concerns relating to air quality at both the MDC and MCC. *See* Doc. No. 113 at 1. We have continued to discuss that issue with the government and the mediator, and are hopeful that the government will soon permit the courthouse HVAC expert to conduct or observe a vapor test in the facilities' legal visiting rooms. Such a test will go a long way to addressing the air quality concerns that many defense attorneys continue to hold and that stand in the way of more robust in-person visiting. In addition, while the MDC has provided CFM (airflow) data on the legal visiting rooms in the West Side visiting area, no data has been provided on the West Side SHU visiting rooms or the East Side visiting rooms. The MCC has provided no airflow data for any of the visiting rooms.

A separate safety concern that has arisen relates to facility staff not wearing masks while on duty. A number of attorneys have observed officers wearing masks around their necks or solely covering their mouths (and not their noses). During a visit that Ms. von Dornum made last week, she observed approximately six officers without masks over their mouths and noses, including one officer who had no mask whatsoever and was drinking an iced tea while escorting her and another legal visitor in the elevator between SHU and the 1st floor. We understand that this issue has been raised with facility leadership, and we will continue to advise the government of reports that we receive.

Telephone calls and VTCs. The parties continue to discuss how to navigate holidays and weekends, during which no remote access is available at either the MDC or MCC. At present, the government has asked that any attorneys needing remote access over a holiday or weekend contact

BOP counsel, copying the Civil Division, no later than the business day before the holiday or weekend begins, and the government will work to accommodate the request. Where the need for remote access arises urgently during the holiday or weekend, the government has directed counsel to call the facility to speak with the duty officer, who will be charged with facilitating a legal call or VTC. The Federal Defenders have detailed their concerns relating to the latter part of the government's proposal based on past difficulties in reaching duty officers in exigent circumstances. We understand, however, that facility leadership intends to provide guidance and direction to front desk staff and duty officers themselves, and we will continue to discuss with the government our concerns about whether its proposed process is being implemented effectively.

Quarantine of defendants after court appearances. As Your Honor knows, the MDC is placing defendants who appear in court on a quarantine unit following their court appearance. The MDC has now proposed a protocol under which defendants will pack up their belongings, including legal materials, so that those will be transported and available to defendants in the quarantine unit upon their return from court. We will continue to confer with the government and mediator about this protocol as it is implemented.

* * *

Thank you for your continued attention to these important issues.

Respectfully submitted,

/s/ Sean Hecker

Sean Hecker

cc: Counsel of Record (by ECF)
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